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4 UNITED STATES DISTRICT COURT
5 WESTERN DISTRICT OF WASHINGTON
6 AT SEATTLE

7 LOCALS 302 AND 612 OF THE
8 INTERNATIONAL UNION OF
9 OPERATING ENGINEERS
10 CONSTRUCTION INDUSTRY HEALTH
11 AND SECURITY FUND, et al.,

12 Plaintiffs,

13 v.

14 BARRY CIVIL CONSTRUCTION, INC., a
15 Washington corporation,

16 Defendant.

CASE NO. 2:19-cv-00800-BAT

**ORDER GRANTING IN PART AND
DENYING IN PART PLAINTIFFS'
MOTION TO COMPEL
DISCOVERY**

17 Plaintiffs, Locals 302 and 612 of the International Union of Operating Engineers
18 Construction Industry Health and Security Fund, Locals 302 and 612 of the International Union
19 of Operating Engineers-Employers Construction Industry Retirement Fund, Western Washington
20 Operating Engineers-Employers Training Trust Fund, and Locals 302 and 612 of the
21 International Union of Operating Engineers (collectively "Trust Funds"), move for an order
22 compelling discovery from Defendant Barry Civil Construction, Inc., and for attorney fees and
23 expenses, pursuant to Fed. R. Civ. P. 26, 33, 34, and 37 and LCR 37. Dkt. 16.

BACKGROUND

24 Defendant is bound to a collective bargaining agreement with Locals 302 and 612 of the
25 International Union of Operating Engineers under which Defendant is required to promptly and

1 fully report for, and pay monthly contributions to, the Trust Funds at varying, specified rates for
2 each hour of compensation Defendant pays to its employees who are members of the bargaining
3 unit represented by the Locals (the “Union Employees”). Dkt. 1, Count One, Article V.

4 Defendant is also required to pay liquidated damages of twelve percent (12%) for delinquent and
5 delinquently paid contributions (or \$25.00 per month, whichever is greater); twelve percent
6 (12%) annual interest on each delinquency; and attorneys' fees, costs, and audit expenses
7 incurred in collection of Defendant's unpaid obligations. Dkt. 1, Count One, Article VI.

8 Defendant submitted remittance reports for the months of December 2018, January 2019
9 and February 2019, but allegedly failed to pay timely contributions for those months. Dkt. 1,
10 Count One, Article VII. On March 1, 2019, Defendant also allegedly failed to promptly report
11 for and/or pay to the Trust Funds, all amounts due for work performed by the Union Employees
12 and the extent of Defendant’s unpaid obligations can only be determined by examining
13 Defendant 's records. Dkt. 1, Count One, Article VIII.

14 Defendant also agreed to deduct from the periodic paychecks of its Union Employees,
15 specified amounts for each hour of compensation paid and to remit these monthly deductions to
16 the Locals no later than the fifteenth of the month immediately following the month in which the
17 deductions are taken. Dkt. 1, Count Two, Article IV. While Defendant submitted remittance
18 reports for the months of December 2018, January 2019 and February 2019, it allegedly failed to
19 pay to the Trust Funds, amounts due for those months in a timely manner. Dkt. 1, Count Two,
20 Article V. Defendant is also allegedly liable for failing to promptly report for and/or pay to the
21 Trust Funds, the dues deducted from the periodic paychecks of Defendant’s employees since
22 March 1, 2019. Dkt. 1, Count Two, Article VI.

1 At issue in this motion are interrogatories and document requests requesting bonding
2 information on public projects, as set forth in Plaintiffs' First Set of Interrogatories and Requests
3 for Production sent to Defendant on August 26, 2019. Dkt. 17, Declaration of Thomas A. Leahy,
4 Exs. A, B.

5 DISCUSSION

6 A. Legal Standard

7 The Court has "broad discretion to manage discovery." *Avila v. Willits Envtl.*
8 *Remediation Tr.*, 633 F.3d 828, 833 (9th Cir. 2011). In general, "[p]arties may obtain discovery
9 regarding any nonprivileged matter that is relevant to any party's claim or defense and
10 proportional to the needs of the case." Fed. R. Civ. P. 26(b)(1). If a party fails to answer an
11 interrogatory or produce documents, the "party seeking discovery may move for an order
12 compelling an answer." Fed. R. Civ. P. 37(a)(3)(B). "The party who resists discovery has the
13 burden to show that discovery should not be allowed, and has the burden of clarifying,
14 explaining, and supporting its objections." *Brown v. Warner*, No. C09-1546RSM, 2015 WL
15 630926, at *1 (W.D. Wash. Feb. 12, 2015) (quoting *Cable & Computer Tech., Inc. v. Lockheed*
16 *Sanders, Inc.*, 175 F.R.D. 646, 650 (C.D. Cal. 1997)).

17 B. Interrogatories & Request for Production

18 Plaintiffs move the Court for an order requiring Defendant to answer Interrogatory Nos. 3
19 through 7, and to produce documents related to those interrogatories as set forth in Requests for
20 Production Nos. 1 through 5. Plaintiffs also seek an award of the attorney fees and expenses
21 incurred in bringing this motion.

22 Interrogatory Nos. 3 through 7 request the bond number, insurance company, project
23 name, and project owner related to particular projects (described in exhibits attached for each

1 interrogatory). Request for Production Nos. 1 through 5, request “any documents” supporting the
2 answers to Interrogatory Nos. 3 through 7 “including, but not limited to, the bond.” Dkt. 17, Ex.
3 A.

4 Plaintiffs contend that the bonding information will allow the Trust Funds to properly
5 place liens on projects and/or obtain retainage amounts to cover the delinquent contributions
6 and/or dues. In addition, Plaintiffs note the Trust Funds have a fiduciary duty to ensure they are
7 properly funded, the information is easily obtainable, the information consists of public bonding
8 information which Defendant is legally required to have, and Plaintiffs do not have to wait until
9 they have obtained a judgment to begin the lien process. Dkt. 16 at 4.

10 Defendant argues that Plaintiff is attempting to conduct post-judgment discovery and the
11 discovery sought is not relevant to any claim or defense presently being litigated pre-judgment.

12 Interrogatory Nos. 3 through 7 request Defendant to identify all bonds applicable to
13 remittance reports that have been provided by Defendant. As Plaintiffs are merely requesting
14 information regarding the bonds that will cover Defendant’s liability, this is relevant and
15 proportional to the needs of the case. Fed. R. Civ. P. 26(b)(1). The Eastern District of
16 California’s decision in *Sierrapine v. Refiner Prod. Mfg., Inc.*, on which Defendant relies, does
17 not compel a different conclusion. 275 F.R.D. 604, 612 (E.D. Cal. 2011). (“The [court] is
18 persuaded by the district courts that have concluded that the plain language of then-numbered
19 Rule 26(a)(1)(D) ‘merely requires the disclosure of an insurance policy or other agreement that
20 gives rise to an insurer’s obligation to indemnify or hold its insured harmless for a judgment, and
21 does not require the production of all agreements relating to insurance.’”) (citing *Excelsior*
22 *College v. Frye*, 233 F.R.D. 583, 585–86 (S.D. Cal. 2006)) (emphasis added).

1 Thus, the motion to compel answers to Interrogatory Nos. 3 through 7 and production of
2 the bonds identified in those interrogatories (Request for Production Nos. 1 through 5) is
3 **GRANTED**. Defendant is directed to answer those interrogatories and produce copies of the
4 bonds to Plaintiffs within **ten (10) days** of this Order.

5 However, to the extent Plaintiffs seek “*any documents* supporting” Defendant’s answers
6 to Interrogatory Nos. 3 through 7, the motion to compel is **DENIED** as this request is overly
7 broad and is neither relevant nor proportional to the needs of the case at this time.

8 C. Attorney Fees

9 The court will not order monetary or other sanctions when it finds that a position was
10 substantially justified in that the parties had a genuine dispute on matters on which reasonable
11 people could differ as to the appropriate outcome. *See Pierce v. Underwood*, 487 U.S. 552, 565,
12 108 S.Ct. 254 (1988). Here, the parties appear to have had a genuine dispute as to whether the
13 discovery requested fell fairly within the type of discovery more appropriately sought post-
14 judgment under Rule 69(a)(2). Under these circumstances, Plaintiffs’ motion for attorney fees
15 and costs is **DENIED**.

16 DATED this 22nd day of November, 2019.

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19 BRIAN A. TSUCHIDA
Chief United States Magistrate Judge